In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.9413 of 1991.

Date of decision22.11.2006.

M/s Himalayan Enterprises.

...Petitioner.

Versus

Union of India and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S .N. Aggarwal.

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Present: Mr.Arun Jain Advocate for the petitioner.

Mr.Surjeet Singh Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

The respondents invited tenders for the disposal of 70 MT of brass fired cartridges cases etc. vide advertisement published in the Auction News Journal dated 5.1.1988. The last date was 30.1.1998. The petitioner firm submitted the tender vide letter dated 27.1.1988 along with two demand drafts collectively for a sum of Rs.2.25 lacs as the earnest money. However, the petitioner received letter dated 8.3.1988 (Annexure P-6) vide which the petitioner firm was informed

that the tenders submitted by it have been rejected and the bank drafts were being returned. The respondents again floated tenders for 100 MT of fired cartridge cases etc. and the last date was 22.7.1988. The petitioner firm had submitted the tenders on 18.7.1988 along with cheque for an amount of Rs.3.50 lacs as security amount. The petitioner firm sent the Bank draft for an amount of 3.65 lacs vide their letter dated 3.9.1988 (Annexure P-9).

The petitioner firm received the acknowledgement receipt of the Bank draft vide letter dated 6.9.1988 from the respondents (Annexure P-10). The petitioner firm received a telegram from the respondents about the acceptance of tenders and requiring the petitioner to reach their office between 12th of October to 15th of October,1988 for signing the agreement letter dated 22.9.1988 (Annexure P-11). However, subsequently the petitioner received telegram dated 10.10.1988 (Annexure P-13) informing the petitioner firm that earlier letter regarding signing of agreement stands cancelled and fresh date will be intimated later on. The petitioner made representation vide letter dated 22.10.1988 (Annexure P-15). Thereafter the petitioner received letter dated 27.10.1988 (Annexure P-16) informing the petitioner firm that the tender has been rejected and the earnest money of Rs.3.65 lacs was being returned.

The petitioner firm was aggrieved against this order of cancellation of the tender after its earlier acceptance. The petitioner

firm filed Civil Writ Petition No.10251 of 1988 which was disposed of by this Court vide order dated 12.3.1990 (Annexure P-17) vide which the right of the petitioner firm to know the reasons for which tender submitted by them has been rejected was upheld and the respondents were directed to assign reasons for rejecting the tender by passing a fresh order. This order was challenged by the respondents by filing Letters Patent Appeal in this Court and after its rejection Special Leave Petition was filed in the Hon'ble Supreme Court. The Special Leave Petition was also dismissed by the Hon'ble Supreme Court. Thereafter, the petitioner firm filed COCP No.175 of 1991. The said case was fixed for arguments on 16.5.1991 but the respondents in between passed order dated 3.5.1991 (Annexure P-19) giving reasons for rejection. The said letter has been challenged by the petitioner by filing the present Civil Writ Petition on the ground that this order is arbitrary and illegal.

The respondents filed written statement. It was submitted that in response to the advertisement dated 5.1.1988, there was a single tender from the petitioner firm and,therefore, it was not possible to finalise the matter. Accordingly, the said tender was re-floated. In response to the second advertisement, the security amount was required to be deposited by the tenderers by Bank draft or by cash deposit in any nationalised Bank at Rampur but the petitioner firm had forwarded a cheque for an amount of 3.5 lacs as security deposit. It was in

violation of the terms and conditions of the tender. Since the conditions of the tender were not complied with, it was rejected for not sending the security amount by way of Bank draft. Later on the Bank draft for an amount of Rs.3.65 lacs was sent by the petitioner firm vide their letter dated 3.9.1988 which was received by the respondents on 5.9.1988.

However, the petitioner firm was informed vide letter dated 10.10.1988 (Annexure R-1) cancelling the earlier intimation. Thereafter, letter dated 3.5.1991 (Annexure R-2) was sent with detailed reasons in compliance with the directions of this Court dated 12.3.1990 passed in Civil Writ Petition No.10251 of 1998. The rejection of tender submitted by the petitioner and the reasons given in the letter dated 3.5.1991 were proper, just, valid and in accordance with law. There was no discrimination whatsoever against the petitioner. Hence, it was prayed that the writ petition be dismissed.

The submission of learned counsel for the petitioner was that the respondents are the public authorities. They could not act arbitrarily nor they could blow hot and cold at the same time. No intimation was given to the petitioner firm if the tender submitted by them was cancelled for want of non payment of security amount by way of Bank draft or by way of cash deposit. Rather, it was duly entertained and the receipt of Bank draft was also acknowledged. Even the tender submitted by the petitioner was accepted for which the

petitioner was called to appear between 12.10.1988 to 15.10.1988 for signing the agreement. However, subsequent cancellation of tender was without any reasons. It was also submitted that the reasons now given in the letter dated 3.5.1991 (Annexure P-19) are unwarranted.

All these submissions now raised by the learned counsel for the petitioner were pleaded by the petitioner in Civil Writ Petition No.10251 of 1988 which was decided by this Court by passing a detailed order dated 12.3.1990. The following was operative part of the said judgment passed by this Court:-

> "In view of the observations made above the writ petition is allowed,the impugned order dated 20.10.1988 (Annexure P.16) is quashed with a direction to the respondents to assign the reason for rejecting the tender submitted by the petitioner firm on July 18,1988 by passing a fresh order. No costs."

Therefore, this Court is to consider whether any order has been passed by the respondents with reasons for rejecting the tender submitted by the petitioner firm on 18.7.1988.

The respondents have now passed the order dated 3.5.1991 in pursuance of the direction given by this Court vide order dated 12.3.1990 passed in Civil Writ Petition No.10251 of 1988. In the said order, the respondents have taken the plea that the petitioner firm had failed to comply with the terms and conditions of the advertisement

while submitting the tender on 18.7.1988. The petitioner firm was required to make security deposit in the form of Bank draft or cash deposit in any nationalised Bank at Rampur. Stipulation was also specific to the effect that the security deposit would not be accepted in cash or by cheque. Thereafter the petitioner firm had made the security deposit by way of cheque and not by way of Bank draft or by depositing the cash in the Nationalised Bank at Rampur. Even as per the admission of the case of the petitioner firm, they had sent the cheque only alongwith the tender submitted on 18.7.1988. In face of it, therefore, the petitioner has no right to claim the acceptance of their bid.

It is also stated in the order dated 3.5.1991 (Annexure P-19) that although the petitioner firm had later on sent Bank draft dated 3.9.1988, the respondents had taken it into consideration and thought of formalising the contract since the petitioner firm was the highest bidder. However, it was objected to by the next highest bidder i.e. Janta Metal Works, Mordabad who lodged the protest against acceptance of an imperfect tender.

It is also stated in that order dated 3.5.1991 that the whole matter was reviewed and it was decided to invoke the clause of the terms and conditions for suspending/stopping the sales at any time without notice and without assigning any reason. It was considered proper and in the interest of justice and fair play to cancel the tender as

a whole and to re-float the same to prevent mis-carriage of justice and without prejudice to the tenderers. Accordingly, the said decision was communicated to the petitioner firm vide letter dated 27.10.1988 along with the Bank draft (Annexure R2).

After considering the letter dated 3.5.1991 (Annexure P-19), this Court finds that the said order is well reasoned order. This shows that the respondent authorities have applied their mind to the facts of the case. They have not acted arbitrarily or with mala fide intention. They have not rejected the tender of the petitioner firm after its acceptance in order to favour a third party or to cause prejudice to the petitioner firm. Since the tender of the petitioner firm was not in accordance with the advertisement it was rejected outright. However, after the petitioner firm sent the Bank Draft,the respondents thought of considering it since the petitioner was the highest bidder. It was not thought proper to accept the tender of the next highest bidder. However,the next higher bidder protested. Therefore, the tenders were cancelled as a whole. There does not appear anything wrong in the decision taken by the respondents.

There is no merit in the writ petition and the same is dismissed.

November 22,2006. (S. N. Aggarwal)
Jaggi Judge